

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE COTTRILL, Individually and as Next
Friend of JEREMY COTTRILL, and SALLY
COTTRILL,

Plaintiffs,

and

SALLY COTTRILL as Next Friend of ANTHONY
KELSEY,

Plaintiff-Appellant,

v

CRAIG KENNETH SENTER,

Defendant-Appellee,

and

FENTON LANES INC.,

Defendant.

UNPUBLISHED
June 23, 2009

No. 285216
Genesee Circuit Court
LC No. 06-084724-NI

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

In this threshold case under the no-fault act, MCL 500.3101 *et seq.*, plaintiff, Sally Cottrill, as next friend of Anthony Kelsey, a minor, appeals as of right from the trial court's

orders dismissing her claims and closing the case.¹ We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant, Craig Kenneth Senter, was allegedly driving under the influence of alcohol when he crossed the centerline and struck head on a vehicle in which Anthony Kelsey was a passenger. Anthony, then in the eighth grade, suffered fractures in his left arm, right foot, and to three ribs. Anthony required household services and attendant care for one month, during which he was under medical orders not to use his right foot or left arm. After that period, he was allowed to resume weight-bearing activities, but was still disabled from participation in sports. Plaintiff asserts that the medical records show that a parent “reported that Anthony experienced a brief loss of consciousness prior to the arrival of the EMS,” but there is no objective medical evidence of this, or that Anthony was ever diagnosed with, or treated for, a traumatic brain injury.²

Anthony testified at deposition that he missed attending school for two months during the eighth grade, but nonetheless completed the school year on time and advanced to the ninth grade. Anthony reported that he had recovered fully from his injuries, but for minor residual pain in his ribs, which he did not expect to continue much longer. He testified that, because of his “ribs and . . . doctors” he was not playing football currently, but that he looked forward to participating in this sport the following year.

The trial court held that the injuries and impairments did not change the trajectory of Anthony’s life, and thus could not justify recovery in tort under the no-fault act. “We review a trial court’s decision on a motion for summary disposition de novo as a question of law.” *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). “In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial.” *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

MCL 500.3135(1) provides that a person “remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” Subsection (7) states that, “‘serious impairment of body function’ means an objectively manifested impairment of an important body function that affects the person’s

¹ This appeal relates to the litigation stemming from Anthony Kelsey’s injuries only, because the parties stipulated to dismissal of defendant Fenton Lanes, and all remaining parties have otherwise settled their claims.

² Plaintiff states that “Jeremy . . . sustained a mild complicated traumatic brain injury,” but Jeremy Cottrill is the other minor involved in the accident, so that item is inapt for present purposes. Plaintiff further asserts that Anthony required “[o]ngoing occupational therapy for visual disturbance,” but the exhibit cited shows that this also concerned Jeremy Cottrill, not Anthony Kelsey.

general ability to lead his or her normal life.” Subsection (2)(a) establishes that whether a person has suffered serious impairment of a body function is a question of law for the court, where there is no factual dispute concerning the nature and extent of the injuries, or where no such factual dispute is material to the question whether the person has suffered serious impairment of a body function.

Our Supreme Court’s decision in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), indicates that the conditions reinstating tort liability under the no-fault act are not lightly to be found. “Although some aspects of a plaintiff’s entire normal life may be interrupted by the impairment, if . . . the course or trajectory of the plaintiff’s normal life has not been affected, then the plaintiff’s ‘general ability’ to lead his normal life has not been affected” for purposes of establishing a serious impairment. *Id.* at 131. The focus is not on the plaintiff’s subjective pain and suffering, “but on injuries that actually affect the functioning of the body.” *Miller v Purcell*, 246 Mich App 244, 249; 631 NW2d 760 (2001).

The following nonexhaustive list of objective factors may be of assistance in evaluating whether the plaintiff’s “general ability” to conduct the course of his normal life has been affected: (a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery. [*Kreiner, supra* at 133 (footnote omitted).]

Plaintiff cites authority for the proposition that an impairment need not be permanent to qualify as one changing the trajectory of the injured person’s life. In fact, *Kreiner* advises, “While an injury need not be permanent, it must be of sufficient duration to affect the course of a plaintiff’s life.” *Kreiner, supra* at 135. We hold that, although it is no minor matter for a middle-school student to miss two months’ schooling, the interruption in this instance affected the trajectory of that school year, not of Anthony’s life in general. His own deposition testimony confirms that Anthony progressed normally in school despite that setback.

The treatment or therapies Anthony needed consisted of X-rays, casts, crutches, and a few follow-up examinations to monitor his progress. These treatments involved no surgery, overnight hospitalization, or heavy medication.

Concerning the prognosis for eventual recovery, plaintiff merely states, “Similar to the extent of any residual impairment analysis, a prognosis for eventual recovery need not include permanent injuries to a serious impairment of body function.” Plaintiff does not suggest that Anthony suffers from any residual impairment, or otherwise has not fully recovered. Again, Anthony’s own deposition testimony indicates that he fully recovered except for experiencing some minor and temporary rib pain.

This record indicates, as a matter of law, that Anthony Kelsey’s injuries and resulting impairments fall far short of the threshold required by *Kreiner* to subject defendant to tort

liability under the no-fault act. Accordingly, we find that the trial court properly granted summary disposition in favor of defendant.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot